

Office of the Secretary, HUD

§ 27.40

Secretary shall provide the mortgagor with a copy of any statement prepared by the Secretary in opposition to the proposed withdrawal at the same time the statement is submitted to the commissioner. If the Secretary receives the commissioner's written statement less than 10 days before the scheduled foreclosure sale, the sale shall automatically be postponed for 14 days. Under these circumstances, notice of the rescheduled sale shall be served as described in section 369B(c) of the Act (12 U.S.C. 3710(c)).

(b) The commissioner may not withdraw the security property from foreclosure under section 369A(a) of the Act (12 U.S.C. 3709(a)) more than once unless the Secretary consents in writing to such withdrawal.

(c) The commissioner shall, in the case of a sale adjourned to a later date, mail a copy of the revised Notice of Default and Foreclosure Sale to the Secretary at least seven days before the date to which the sale has been adjourned.

(d) If upon application by the mortgagor, the commissioner refuses to withdraw the property from foreclosure under section 369A(a) of the Act (12 U.S.C. 3709(a)), the commissioner shall provide the mortgagor and the Secretary with a written statement of the reasons for the refusal.

§ 27.30 Conduct of the sale.

(a) The commissioner shall accept written one-price sealed bids from any party including the Secretary so long as those bids conform to the requirements described in the Notice of Default and Foreclosure Sale. The commissioner shall announce the name of each such bidder and the amount of the bid. The commissioner shall accept oral bids from any party, including parties who submitted one-price sealed bids, if those oral bids conform to the requirements described in the Notice of Default and Foreclosure Sale. The commissioner will announce the amount of the high bid and the name of the successful bidder before the close of the sale.

(b) Relatives of the commissioner who may not bid at the foreclosure sale include parents, siblings, spouses and children. Related business entities

which may not bid include entities or concerns whose relationship with the commissioner at the time the commissioner is designated is such that, directly or indirectly, one concern or individual formulates, directs, or controls the other concern; or has the power to formulate, direct, or control the other concern; or has the responsibility and authority either to prevent in the first instance, or promptly to correct, the offensive conduct of the other concern. Business concerns are also affiliates of each other when a third party is similarly situated with respect to both concerns.

(c) If the commissioner employs an auctioneer to conduct the foreclosure sale, the auctioneer must be a licensed auctioneer, an officer of State or local government, or any other person who commonly conducts foreclosure sales in the area in which the security property is located.

§ 27.35 Foreclosure costs.

Pursuant to section 369C(5) of the Act (12 U.S.C. 3711(5)), a commission to the foreclosure commissioner for the conduct of the foreclosure will be paid in an amount to be determined by the General Counsel. A commission may be allowed to the commissioner notwithstanding termination of the sale or appointment of a substitute commissioner before the sale takes place.

§ 27.40 Disposition of sale proceeds.

(a) The priority of the Secretary's lien shall be determined by the Federal first-in-time first-in-right rule. State laws affording priority to liens recorded after the mortgage are preempted.

(b) If there is more than one party holding a lien or assessment payable from sales proceeds, the claim of each party holding the same kind of lien or assessment will be given the relative priority to which it would be entitled under the law of the State in which the security property is located.

(c) The commissioner will keep such records as will permit the Secretary to verify the costs claimed under section 369C of the Act (12 U.S.C. 3711), and otherwise to audit the commissioner's disposition of the sale proceeds.